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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/595,964	05/09/2007	Jeffrey D. Edwards	81443-2	9819
22504 7590 05/13/2009 DAVIS WRIGHT TREMAINE, LLP/Seattle 1201 Third Avenue, Suite 2200 SEATTLE, WA 98101-3045				
EXAMINER				
CAMPBELL, VICTORIA P				
ART UNIT		PAPER NUMBER		
3763				
MAIL DATE		DELIVERY MODE		
05/13/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/595,964

Applicant(s)

EDWARDS, JEFFREY D.

Examiner

VICTORIA P. CAMPBELL

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 22 May 2006.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-33 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-33 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 22 May 2006 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date 5/22/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

This is the initial Office Action based on the 10/595964 application filed May 9, 2007. Claims 1-33 as filed in the Preliminary Amendment are currently pending and considered below.

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference character(s) not mentioned in the description: 30 and 32 in Figure 5. Corrected drawing sheets in compliance with 37 CFR 1.121(d), or amendment to the specification to add the reference character(s) in the description in compliance with 37 CFR 1.121(b) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.
2. The drawings are objected to because Figures 1 and 2 are generally dark, blurry, and difficult to interpret. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any

amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Objections

3. Claim 14 recites the limitation "each energisation pulse" in line 2 of the claim. There is insufficient antecedent basis for this limitation in the claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148

USPQ 459 (1966), that are applied for establishing a background for determining

obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
 2. Ascertaining the differences between the prior art and the claims at issue.
 3. Resolving the level of ordinary skill in the pertinent art.
 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.
6. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over USPN 6,574,504 B1 to Mazaury et al.

Regarding the above claims, Mazaury et al teach an apparatus and method for facilitating transdermal delivery of a therapy comprising providing an electromagnetic field generating device (3, 7); a control device (5) to control the generating device to alternately produce active and substantially inactive electromagnetic field portions (Col. 4, lines 17-22), wherein the inactive electromagnetic field portion has no electromagnetic pulses (Col. 4, lines 17-19). Further, Mazaury et al teach that the electromagnetic field generating device is a coil, and the control device comprises a microcontroller (5) programmable by a user so that an electromagnetic signal corresponding to a substance delivery plan is produced which increases dermal permeability at one or more times for a specific period of time (Cols. 7-8). Mazaury et al further teach that the electromagnetic field generating and control device are embedded in a substantially flat member (3, 5; see Fig. 1), and that the therapeutic substance is a

drug (the essential oils are used to provide treatment for various ailments, making them drugs).

Mazaury et al are silent, however, to the active electromagnetic field portions being shorter than the inactive electromagnetic field portions, as well as the active electromagnetic field portions having an electromagnetic field packet having a plurality of successive pulses. However, the process of varying the duration of electromagnetic delivery is taught by Mazaury et al and it therefore would have been obvious to one having ordinary skill in the art to experiment with various pulse lengths and combinations to determine the best combination to deliver a particular compound.

Mazaury et al are also silent the electromagnetic field generating device comprising a solid state switching device which can be a transistor. However, Mazaury et al describe the switching on and off of the electromagnetic field generating device, which indicates the need for a circuit component having the capability of activating or deactivating the coil, of which there are a limited number of options. Therefore, it would have been obvious to one having ordinary skill in the art to use a transistor as a solid state switching device in the electromagnetic field generating device in order to accurately control the activation and deactivation of the electromagnetic coil. Further, Mazaury et al do not explicitly teach that the waveforms being generally rectangular in configuration, as well as to the various ranges of energisation packet frequency, number of signal pulses, and duration of energy pulses. Regarding the shape of the waveform, any signal pulse having increasing and decreasing portions (ie: pulse on and pulse off), as well as a duration of the pulse, the waveform will be

generally rectangular. Such is the case with Mazaury et al, and thus the above limitation is taught by Mazaury et al. Regarding the various ranges of frequency, number, and duration of the packets and pulses, Mazaury et al teach varying pulse intensity, duration, and frequency. It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide electromagnetic pulses in the described ranges, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. In re Aller, 105 USPQ 233.

Regarding the limitation that the therapeutic substance is disposed on an outwardly facing surface of the apparatus, the examiner notes that Mazaury et al teach applying the essential oils to the scalp and then applying the electromagnetic energy. When the device is set atop the head, the examiner notes that the therapeutic substance will then be disposed on an outwardly facing surface of the apparatus.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA P. CAMPBELL whose telephone number is (571)270-5035. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victoria P Campbell
Examiner, AU 3763

/Nicholas D Lucchesi/
Supervisory Patent Examiner, Art Unit 3763